



FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request;

Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (“PRA”), the Federal Trade Commission (“FTC” or “Commission”) is seeking public comment on its proposal to extend for an additional three years the Office of Management and Budget (“OMB”) clearance for information collection requirements in its Trade Regulation Rule on Disclosure Requirements and Prohibitions Concerning Franchising (“Franchise Rule” or “Rule”). That clearance expires on November 30, 2023.

DATES: Comments must be filed by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Franchise Rule, PRA Comment, FTC File No. P094400,” on your comment, and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Christine M. Todaro, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, 600 Pennsylvania Ave., NW, CC-8548, Washington, DC 20580, (202) 326-3711, ctodaro@ftc.gov.

SUPPLEMENTARY INFORMATION:

Title of Collection: Franchise Rule, 16 CFR part 436.

OMB Control Number: 3084-0107.

Type of Review: Extension without change of currently approved collection.

Affected Public: Private Sector: Businesses and other for-profit entities.

Estimated Annual Burden Hours: 22,480.

Estimated Annual Labor Costs: \$8,386,800.

Estimated Annual Non-Labor Costs: \$4,800,000.

Abstract: The Franchise Rule ensures that consumers who are considering a franchise investment have access to the material information they need to make an informed investment decision and compare different franchise offerings. The Rule requires franchisors to furnish prospective purchasers with a Franchise Disclosure Document (“FDD”) that provides information relating to the franchisor, its business, the nature of the proposed franchise, and any representations by the franchisor about financial performance regarding actual or potential sales, income, or profits. The Rule also requires that franchisors maintain records to facilitate enforcement of the Rule.¹ The franchisor must preserve materially different copies of its FDD for 3 years, as well as information that provides a reasonable basis for any financial performance representation it elects to make.

Under the PRA, 44 U.S.C. 3501 – 3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. “Collection of information” means agency requests or requirements that members of the public submit reports, keep records,

¹ The Rule was amended in 2007 to conform its disclosure requirements with the disclosure format accepted by states that have franchise registration or disclosure laws. See 72 FR 15444 (Mar. 30, 2007). The amended Rule has significantly minimized any compliance burden beyond what is required by state law.

or provide information to a third party. *See* 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the information collection requirements contained in the Franchise Rule, 16 CFR part 436 (OMB Control No. 3084-0107).

Burden Statement:

Estimated Annual Hours Burden: 22,480.

FTC staff estimates that there are approximately 4,000 sellers of franchises covered by the Rule, with approximately 6% (240) of that total reflecting an equal amount of new and departing business entrants.² FTC staff estimates that the average annual disclosure burden for established franchisors to update existing disclosure documents will be three hours per seller for a total of 11,280 hours (3,760 franchisors × 3 hours). For new sellers of franchise opportunities, FTC staff estimates that the preparation of disclosure documents will require approximately 30 hours for a total of 7,200 hours (240 new franchisors × 30 hours).

Covered franchisors also may need to maintain an alternative version of the FDD for use in non-registration states, which may differ from FDDs used in registration states. FTC staff estimates that this recordkeeping obligation would require approximately one hour per year. This results in an additional burden of 4,000 hours (4,000 franchisors × 1 hour). Under the Rule, a franchisor is also required to retain copies of receipts of disclosure documents, as well as materially different versions of its disclosure documents. Such recordkeeping requirements, however, are consistent with, or less burdensome than, those imposed by the states that have franchise registration and disclosure laws. Accordingly, FTC staff believes that incremental recordkeeping burden, if any, would be de minimis.

Estimated Annual Labor Costs: \$8,386,800.

² Some franchise offerings may qualify for the exemptions listed in 16 CFR 436.8. Thus, this estimate may overestimate the number of franchisors subject to the Rule.

Labor costs are derived by applying estimated hourly cost figures to the burden hours described above. FTC staff anticipates that an attorney will prepare required disclosure documents at an estimated hourly attorney rate of \$450.³ For established franchisors, FTC staff estimates the following annual labor costs: \$1,350 per established franchisor (3 hours × \$450) for a total annual cost burden of \$5,076,000 ($\$1,350 \times 3,760$ established franchisors). For new franchisors, this yields an annual cost of \$13,500 per new franchisor (30 hours × \$450) for a total annual cost burden of \$3,240,000 for new franchisors ($\$13,500 \times 240$ new franchisors).

Additionally, FTC staff anticipates that recordkeeping under the Rule will be performed by clerical staff at approximately \$17.70 per hour.⁴ Thus, based on the 4,000 hours of recordkeeping burden per year for all covered franchisors, this will amount to a total annual labor cost of \$70,800 ($\$17.70 \times 4,000$ hours).

Estimated Annual Non-Labor Costs: \$4,800,000.

FTC staff estimates that the non-labor burden incurred by franchisors differs based on the length of the disclosure document, the number produced, and the method of distribution employed by franchisors. FTC staff estimates that the estimated 4,000 sellers of franchise opportunities distribute approximately 100 disclosure documents each annually for a total of 400,000 disclosure documents. FTC staff estimates that 80% of these disclosure documents (320,000) are distributed electronically at a cost of \$5 per electronic disclosure. This results in a total estimated \$1,600,000 ($320,000 \times \5) in non-labor costs for electronic disclosure. FTC staff estimates that the remaining 20% of disclosure documents (80,000) are distributed in hard copy at a cost of \$40 each for printing and mailing costs. This results in a total estimated non-labor cost burden associated with printing and mailing disclosure documents of \$3,200,000 ($80,000 \times \40).

³ It is staff's understanding that franchisors often hire outside counsel to prepare the required disclosures, and outside counsel is typically compensated at a higher rate than in-house attorneys.

⁴ Based on Bureau and Labor Statistics' Occupational Employment and Wages, May 2021, National Estimates for File Clerks, *available at* <https://www.bls.gov/oes/current/oes434071.htm>.

Request for Comment:

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the disclosure and recordkeeping requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

For the FTC to consider a comment, we must receive it on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Your comment, including your name and your state, will be placed on the public record of this proceeding, including the <https://www.regulations.gov> website.

You can file a comment online or on paper. Due to the public health emergency in response to the COVID-19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We encourage you to submit your comments online through the <https://www.regulations.gov> website.

If you file your comment on paper, write "Franchise Rule, PRA Comment, FTC File No. P094400," on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will become publicly available at <https://www.regulations.gov>, you are solely responsible for making sure that your comment does not include any sensitive or

confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential"—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including, in particular, competitively sensitive information, such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must (1) be filed in paper form, (2) be clearly labeled "Confidential," and (3) comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at www.regulations.gov, we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. For information on the Commission's privacy policy, including routine uses permitted by the Privacy

Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Josephine Liu,

Assistant General Counsel for Legal Counsel.

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